# Fair Political Practices Commission MEMORANDUM

**To:** Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy

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**Date:** March 1, 2005

**Subject:** Gift Cluster – Adoption of Proposed Amendments to Regulation 18946, 18946.1,

18946.2, 18946.4, and adopted of Regulation 18640.

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# I. Executive Summary

As a result of recent questions concerning the Political Reform Act's (the "Act") gift valuation methods contained in regulations 18946 through 18946.4, and specifically those dealing with the value of the gift received in attending an event, the Commission has reexamined the current regulations in order to determine if a need exists for clarification of certain issues and modification of certain valuation methods to better serve the purposes of the Act. The issues presented involve the "face-value rule" for ticketed events, the "drop-in rule" for invitation-only events, and the "no value rule" for 501(c)(3) fundraising events.

At the January 2005 meeting, the Commission made decisions regarding the following:

- **Regulation 18946** Amendments to regulation 18946 providing certain definitional terms, as these terms are used in regulation 18946 through 18946.5, should be brought back for adoption at the March Commission meeting.
- **Regulation 18946.1** Amendments to regulation 18946.1, proposing to change the face value rule to a cost to the donor rule when the ticket is purchased at a higher price. The Commission directed staff to propose alternative language that would clarify the "duty of inquiry."
- Regulation 18946.2 and Adopt Regulation 18640 Amendments to regulation 18946.2 and adoption of regulation 18640 regarding the "drop-in rule" were discussed, and the Commission directed staff to delete any time references and limit the value of the gift to the food and beverage consumed plus any specific item received at the event.
- **Regulation 18946.4** Amendments to regulation 18946.4 regarding the "no value rule" for charitable fundraising events were discussed, and the Commission directed staff to bring back all options as presented and to add language suggested by Commissioner

Karlan that would limit the no value rule to two tickets, with a caveat that if more than two tickets were accepted, all tickets must be valued.

The issues for consideration in this proposal are as follows:

**Decision Point 1:** Should the "face value rule" provided in regulation 18946.1 be amended to provide that the value of the ticket for certain events be the cost to the donor?

**Decision Point 2:** Should the rules providing for the valuation of tickets set forth in regulation 18946.1 include language clarifying that handling and service fees should not be included in any value determination?

**Decision Point 3:** Should the "no value rule" for tickets to fundraising events for 501(c)(3) organizations under regulations 18946.4(b) be either eliminated or modified by limiting to two the number of tickets that qualify under this rule? If the rule is maintained by limiting the number of tickets, should the rule only apply if the total number of tickets provided does not exceed the established limit?

**Decision Point 4:** Should the "no value rule" for tickets to fundraising events for 501(c)(3) organizations under regulation 18946.4(b) be modified if the fundraiser is an entertainment event such as a sporting event, concert, or play, by limiting the number of tickets that qualify under this rule to two and valuing the additional tickets under regulation 18946.1? Should the two free ticket provision only apply if the total number of tickets provided does not exceed that limit?

#### II. Background

The Political Reform Act places certain restrictions on the receipt of gifts by public officials. The Act prohibits candidates and officials from receiving gifts of \$360¹ or more in a calendar year from any person in a position to influence the public official's action and gifts valued at \$10 or more received in a calendar month from a lobbyist or lobbying firm. In addition, the Act prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift valued at \$360 or more. Pursuant to this provision, public officials are deemed to have a conflict of interest if participating in a decision involving a donor of a gift to the official, and they are prohibited from voting on or exercising any influence on the outcome of such a decision.

Recently, Commission staff was asked to analyze valuation methods regarding two specific types of gifts: ticketed events, and invitation-only events. This request was prompted by questions surrounding the Rose Parade and Rose Bowl Game, and San Diego's hosting of the Super Bowl in January of 2003, with attendance by city officials at the "Take Flight" or "Commissioner's Party" as part of the Super Bowl festivities.

The focus of concern regarding the Super Bowl activities was the proper method for determining the value of the gift received in attending the Commissioner's Party — an invitation-

<sup>&</sup>lt;sup>1</sup> The increase from \$340 went into effect on January 1, 2005.

only event. Although Commission staff advice has consistently stated that the value of the gift received in attending an invitation-only event is the attendee's pro rata share of the cost of the event, the only codification of this rule appears in regulation 18946.2, and its strict application addresses only "officials or candidates who are honored at a testimonial dinner or similar event." As a result, staff saw a need to expressly extend the general rule to all invitation-only events.

In addition, examination of this issue raised questions relating to a modified "pro-rata share" valuation method used for invitation-only events where a guest attends an event, but only stays briefly and does not receive the full value of that which is provided at the event. Referred to as the "drop-in" rule, Commission staff has consistently advised that if the official merely drops-in for a brief period of time and does not stay for the meal or entertainment, the value of the gift received is limited to the actual value of the food and beverages the official consumed at the event. This rule has implications for both lobbyist employers, who are required to report the value of the gift on periodic "activity expense" reports, as well as for the officials attending the event. Since this rule was developed solely as Commission staff advice, once again staff saw a need to present a proposed codification of the rule for the Commission to consider.

Finally, any examination of gift valuation rules raised as a result of events surrounding the Super Bowl would not be complete without looking at the value of the ticket to the game itself. Regulation 18946.1 currently provides that tickets offered for public sale for certain events, including sporting events, are valued at the face value of the ticket. However, for certain events, the Super Bowl Game being one of the most extreme examples, because the demand far outweighs the supply, obtaining tickets at face value can be particularly difficult, and many tickets to these events are obtained on the secondary market at prices greatly exceeding their face value. Because of this, gifts of highly valued tickets can be passed along under the radar of the gift limitation and conflict of interest rules due to their fixed valuation at the price indicated on the ticket. Accordingly, staff proposes a reexamination of the gift valuation rule for tickets under regulation 18946.1.

The valuation of tickets to the Rose Parade and Rose Bowl Game involves a different concern. The Rose Parade and Rose Bowl Game are fundraising events for the Tournament of Roses Association, a 501(c)(3) organization. As such, pursuant to regulation 18946.4(b), tickets to these events have no value. Each year, Pasadena city officials are provided tickets to these events, some at no charge and others for purchase at face value. However, because of the "no value rule," these items need not be reported as gifts. The rule applies even if the tickets are not received from the Tournament of Roses Association. Staff proposes that the Commission reexamine the purposes of the 501(c)(3) "no value" exception and consider modification of the rule for certain "big ticket" events.

Additional information regarding the background and history of the current regulations and current Commission advice can be found in the <u>Pre-notice Discussion of Amendments to the "Gift Cluster" Regulations — 18946, 18946.1, 18946.2, 18946.4; and adoption of Regulation 18640</u> memorandum ("Pre-notice Memorandum") presented at the October Commission meeting.

### **III. Current Statutes and Regulations**

Section 82028(a) provides that a "gift" means any payment<sup>2</sup> that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. The Act regulates the receipt of gifts by public officials and candidates in three ways:

First, the Act places limitations on the acceptance of large gifts from anyone who may stand to benefit from the public official's actions. The current limit is \$360 or more from any single source in a calendar year. (Section 89503, regulation 18940.2.) Additionally, the Act prohibits any gift of \$10 or more in a calendar month from lobbyists or lobbying firms. (Sections 86203, 86204.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on candidates and public officials, requiring that any gift of \$50 or more from certain sources be reported and disclosed on a public document (Statement of Economic Interests). (Sections 87200, 87203, 87207, 87300, 87302.)

Finally, the Act prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift or gifts with an aggregate value of \$360 or more provided to, received by, or promised to the public official within 12 months prior to the time the decision is made. (Sections 87100, 87103(e), regulations 18700, 18703.4.)

The gift valuation rules are found in regulations 18946 through 18946.4. Regulation 18946(a) provides the Act's basic valuation rule — that except in the circumstances identified under regulations 18946.1 through 18946.5, gifts are valued at their fair market value as of the date of receipt or promise. There is an alternative to subdivision (a)'s basic fair-market-value stated in regulation 18946, subdivision (b). It provides that whenever the fair market value cannot be determined because the gift is unique or unusual, the value is the cost to the donor.

The events discussed in section II above impact three of the specific situations identified in regulation 18946, where the rules differ from the basic fair market value rule stated therein. All concern attendance at events and are addressed in separate regulations —18946.1, 18946.2, and 18946.4.

<u>Ticketed Events</u>: Regulation 18946.1 states the rule for valuation of tickets to events, and provides that the value of the ticket is the face value "provided that the face value is a price that was, or otherwise would have been, offered to the general public." A ticket to the Super Bowl Game would be valued under this method, at its face value.

<u>Invitation Events</u>: Regulation 18946.2 sets forth the valuation method for attending testimonial dinners, for officials and candidates who are honored, as the "pro rata share of the cost of the event." While this method has been applied to all invitation-only events through staff advice letters, the current regulation refers only to testimonial dinners where an official or candidate is being honored.

<sup>&</sup>lt;sup>2</sup> Section 82044 provides: "Payment' means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible."

<u>Charitable Fundraisers/ "No Value" Events</u>: Regulation 18946.4(b) provides that if the event is a "fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the ticket or other admission privilege has no value." Since the Tournament of Roses Association is a 501(c)(3) organization, tickets to the Rose Parade and Rose Bowl Game have no value pursuant to this regulation.

#### IV. Discussion and Proposed Regulatory Action

Staff proposes that the Commission adopt amendments to regulations 18946 through 18946.4, and add regulation 18640 as discussed below. These proposed amendments offer to: (1) provide a more accurate reflection of the true value of premium event tickets; (2) codify the current advice for establishing the value of attending any invitation-only event and the value of attendance at an event on a "drop-in" basis; and (3) determine a proper modification of the "no value rule" for tickets to 501(c)(3) fundraising events, including when the event is a commercial entertainment event.<sup>3</sup>

## A. Proposed Amendments to Regulation 18946

As stated above, regulation 18946 provides the basis rules for valuation of gifts. The proposed amendment to regulation 18946 adds language as subdivision (d), which proposes definitions for the term: "face value," "ticket/pass," "invitation," and "specific item," as those terms are used in regulations 18946 through 18946.4 and regulation 18640. At the January meeting, the Commission considered the regulation and directed staff to bring back these proposed changes to the Commission for adoption at the March meeting.

#### **B.** Proposed Amendments to Regulation 18946.1

<u>Current Rule</u>: Regulation 18946.1 provides the rules for determining the value of a gift of a ticket or pass to certain events, including sporting events. Under this rule the fair market value of a ticket is fixed at its "face value" when offered for sale to the general public at that price. In fixing the value at face value, the current regulation overlooks fluctuations in the market that commonly occur with certain concerts, plays, and major sporting events, such as the Super Bowl Game.

<u>Proposal</u>: At the January meeting, the Commission considered an amendment that would have provided that if the ticket is purchased by the donor at a price greater than its face value, the value shall be the cost to the donor, thereby altering the valuation method for certain "high value" tickets to reflect the true market value of these items. This method of valuation, however, would only apply to tickets actually purchased at the higher price and would not require an adjustment in the gift value of a ticket according to market changes after the donor has purchased the ticket (e.g. if the value increases between the time the ticket is purchased and the time the gift is made).

<sup>&</sup>lt;sup>3</sup> Changes to the regulations made since the January Commission meeting have been highlighted in the attached text of the regulations.

In considering the proposed amendment, the Commission expressed concern that the changes would not provide sufficient notice to a potential recipient of the gift that he or she would have a duty to inquire as to the actual price paid for the ticket. An example was given regarding Sacramento Kings regular season basketball tickets, which currently are resold above face value in many cases. If someone were to be given such tickets, he or she would not necessarily have any reason to suspect that the ticket should be valued at any price other than the face value and, therefore, may find himself or herself in violation of the Act by accepting, or not reporting the full value of, the tickets.

Chairman Randolph proposed leaving the rule as it is currently and making no change. However, if a change is made, she suggested a method to alleviate the problem of notice to the recipient of his or her obligation to inquire as to whether the donor paid more than face value. The proposal was to make the value of the ticket the cost to the donor in all cases, except where the donor paid less than face value, thereby putting the duty of inquiry up front, for the recipient to determine the value of the ticket by asking the donor. Commissioner Karlan suggested adding language that would establish a "knows or has reason to know" (that the ticket was purchased at greater than face value) standard as the duty of inquiry. The Commission directed staff to explore additional language addressing their concerns and to bring back proposals for the March meeting.

#### **Decision Point 1** now offers three options:

- Option one presents a new option, based on Chairman Randolph's suggestion, that sets the value of the ticket at the cost to the donor. As suggested, this method would notify the recipient up front of the duty to inquire as to the ticket's cost. Optional language is presented that would soften this requirement somewhat by creating a presumption that the ticket was purchased at face value if equivalent tickets were available at the face value price at the time the ticket was received. The recipient, in this case, could simply call the venue and ask if equivalent tickets were available at face value, or go on-line and see if they were. In other words, if the ticket could be purchased for face value at the time it was received, it would be presumed that the ticket was purchased at face value by the donor.
- Option two presents a modification of the only option presented at the last meeting, which would have increased the value of the ticket from its face value to its actual cost to the donor whenever the donor paid more than face value. While accomplishing the same objective as the previous language, this method considers the suggestions made by the Commission as to a means of identifying the duty of inquiry on the part of the recipient. The previous language left the value at the face value only if the donor paid face value or less. If the donor paid more, the value was the cost to the donor. However, there was nothing contained in the language to indicate to the recipient when he or she may have a duty to ask the donor what was paid for the ticket. The Commission was concerned that a recipient may not realize that the event he or she attended was worth anything more than what was indicated on the ticket received, and would therefore not realize that the value was something that needed to be otherwise

determined. Therefore, recipients could find themselves in violation of the Act without realizing it.

To address that concern, the language now focuses on the event itself, in order to direct the recipient to determine the value of the event, rather than what the donor might have paid. This language places the recipient in the shoes of any ordinary buyer attempting to purchase tickets to events. A buyer, wishing to purchase tickets to an event would first see if tickets were available for their face value. If the event were sold out, the buyer would than attempt to purchase tickets from another source and, in so doing, determine how much it would cost to acquire the tickets.

Under the language presented in option two the same method would apply for a recipient who receives gifted tickets. The recipient would likewise have to determine how popular the event is, i.e. whether it was sold out or if tickets were still available. If tickets were not available for purchase at face value at the time the tickets were received from the donor, the recipient would be on notice that the tickets may have been purchased at a higher price by the donor. In that case, the recipient would be required to ask the donor how much he or she paid for the tickets. This amendment would thereby impose a duty of inquiry to determine if the ticket was purchased at a price greater than face value only when there is sufficient reason to believe that the ticket may have been purchased at a higher price.

• Option three presents the language in the regulation as it currently exists. Therefore, if this option is accepted, there would be no change.

New **Decision Point 2** addresses another question that arose during the discussion at the January meeting — whether or not to include service charges and other such fees in determining the cost to the donor. The consensus was that these charges should not be included. Decision Point 2 adds proposed language clarifying this point.

Staff Recommendation: Staff recommends, in light of the discussion at the January Commission meeting, that the Commission adopt Decision Point 1, Option 1, with the alternate language included. This option is the simplest to apply, in that it puts the recipient on notice that he or she will have to determine the cost to the donor. The alternative language is offered as an option to lessen this duty of inquiry in cases where it is clear that the ticket had no special value beyond its face value. The alternate language gives the official a contingent presumption, which would eliminate the need to contact the donor if the official takes advance of the available presumption by doing the necessary leg work to find out if the presumption may apply.

#### C. Proposed Amendments to Regulation 18946.2 and Adoption of Regulation 18640

The only unresolved issue with regard to the proposed amendments to regulation 18946.2 prior to the January Commission meeting involved the "drop-in" rule proposed under subdivision (e), and as it relates to the lobbyist employer reporting obligation as set forth in the proposed regulation 18640. At the January meeting, the Commission instructed staff to eliminate the temporal element to this proposed rule altogether and to establish the value of the gift received at

the value of the food and beverage consumed by the official (plus the value of any specific item received) as long as the official does not stay for any dinner or entertainment provided. The current language in proposed subdivision (e) and proposed regulation 18640 has been amended accordingly.

# D. Proposed Amendments to Regulation 18946.4

<u>Current Rule</u>: Regulation 18946.4 provides the valuation rules for tickets to nonprofit and political fundraisers. Subdivision (b) states that if the fundraising event is for a 501(c)(3) organization, the ticket has no value. Pursuant to this section, tickets to the Rose Bowl Game and Rose parade, and such other events held by 501(c)(3) organizations, have no value.

<u>Proposal</u>: At the January meeting, the Commission considered the various options presented to either amend or eliminate the no value rule for 501(c)(3) organizations. Commissioner Karlan suggested that one method of balancing interests so that charitable organizations would still be able to receive the potential fundraising benefit by having officials attend these events, but limit potential abuses in receiving multiple free tickets, would be to allow the official two free tickets. However, if more than two tickets are accepted, all the tickets received would be valued, including the first two (otherwise free) tickets.

The Commission directed staff to bring back the language as written, and to add language reflecting Commissioner Karlan's proposal. **Decision Points 3 and 4** are identical to language presented at the January meeting, using the language in alternative 1 of each decision point. Alternative 2, in each case, incorporates Commissioner Karlan's proposal, valuing all tickets equally, in the manner identified, if more than two tickets are received. Essentially, the difference between these alternatives is whether or not the two free ticket rule should only be available to an official if the official limits his or her total receipt of tickets to two and only two tickets.

Staff Recommendation: Staff recommends that the Commission adopt both Decision Point 3, Option 2 and Decision Point 4 with the language presented, in each instance, in alternative 2. This method preserves the charitable organization's ability to invite officials and candidates to its fundraising events by providing free tickets, but places an appropriate limit on the number of free tickets given and provides further incentive to respect that limit by eliminating the free ticket provision if more than two tickets are provided.

#### Attachments:

Appendix A – Proposed Amendments to Regulation 18946

Appendix B – Proposed Amendments to Regulation 18946.1

Appendix C – Proposed Amendments to Regulation 18946.2 and adoption of Regulation 18640

Appendix D – Proposed Amendments to Regulation 18946.4

Appendix E – Proposed Amendments to Regulation 18941.1

Chairman Randolph and Commissioners Page 9